A Study on Regulating Legal Mechanism
and
Enforcement of Insider Trading in India'

SYNOPSIS OF THE THESIS

In Partial Fulfillment of the Requirements for the Degree of

DOCTOR OF PHILOSOPHY

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Synopsis

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INTRODUCTION

India's position as a global economic force, inter alia, mandates the need for a robust regulatory framework for its securities market, to boost the confidence of both the domestic and the international investors that their money is safe in a fair and transparent securities market. In the recent years, India has witnessed large price fluctuations in the shares of public companies during the periods of mergers or acquisitions and illegal trading on the basis of unpublished price sensitive information, which has caused great concern to the Indian securities market. If the fiduciaries who run the companies for the benefit of the shareholders gain unjust enrichment at the cost of the company and its shareholders, it becomes a heinous crime.

Although illegal insider trading is a global phenomenon, a study by the IMF reports that it is relatively high in countries such as India, China, Russia, etc., resulting in high volatility in share prices. Indian studies also have reported that insider trading activity is observed amongst companies belonging to the same business group prior to merger announcements.

"There is no other kind of trading in India, but the insider variety" remarked a former president of the Bombay Stock Exchange in 1992. In simple words Insider Trading is the directly or indirectly trading of the company's security by the person directly or indirectly related to the company and aware of the price sensitive information with respect to the company whose securities he deals with. The United States of America was the first country to formally enact a legislation to regulate insider trading.[1] This decision of the US Congress had surprised many around the world especially because in certain other parts of the world, access to inside information and its use for personal benefits were regarded as perks of office and the benefits of having reached a high stage in life. Accustomed to this sentiment, the restriction on insider trading was mocked as 'the crime of being something in the city[2] by the Sunday Times of UK in 1973. However, over the years, most of the jurisdictions around the world have recognized the requirement to restrict insider trading in one form or the other and have accordingly put in place legal restrictions to this effect. It certainly is unfair to permit trading of listed

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[1] Securities and Exchange Act, 1934

[2] http://expressindia.indianexpress.com/fe/daily/20000821/fco21044.html

securities when individuals are differently informed on the affairs of a company. When insiders use price sensitive privileged information to reap profits or to avert losses, the other investors or shareholders may suffer severe economic disadvantage. Like the US, most of the countries have put in place regulatory measures in one form or the other to restrict insider trading.

HYPOTHESIS

Hypothesis is a proposition, condition or principle which is assumed perhaps without belief, in order to draw out its logical consequences by this method to test its accord with facts which are known or may be defined in a research. The basic presumptions on the basis of which I venture on the research work on this field may be summed up within the following points:

- As the asymmetry of information causes an adverse impact on the market.
- The need for adequate regulations and an efficient enforcement mechanism to curb insider trading.
- The investors have the fear of investing in the market.
- To study the developed nation laws and make changes to the existing framework.
- To study the impact of the present legal framework on the market and the investors.
- The criminal dimension to Insider Trading can be controlled.

OBJECTIVES

1. To analyze the current legal regime of Insider Trading in India and to identify the loopholes in the existing regime.
2. To make comparative analysis of laws governing Insider Trading in India, U.K & U.S.A.
3. To examine the criminal law dimension of Insider Trading.
4. To scrutinize the judicial response to Insider Trading issues.

LITERATURE REVIEW

- *Jain, Sankalp, Insider Trading in Indian Market: Legal and Regulatory Framework (October 3, 2015). The paper focuses on the insider trading laws and its evolution*
- *Lev Bromberg, George Gilligan, Ian Ramsay" The Extent And Intensity Of Insider Trading Enforcement – An International Comparison" The study compares the type, magnitude and frequency of sanctions imposed by statutory bodies and the courts for insider trading and provides important insights into the enforcement tools commonly used by securities regulators to enforce insider trading laws.*
- *Suneeth Katarki and Namita Vishwanath "Mens Rea" In Insider Trading – A "Sine Qua Non"?2015. This article analyses the penal provisions of the legal framework to check insider trading in the United States of America and India.*
- *Nishith Desai "Insider Trading Regulations: A primer"2013. The research paper focuses on the need to regulate insider trading in the Indian Market.*
- *P.K.Pandya,"SEBI Insider Trading Regulations 2015 and 1992-comparison"June 2015. The paper focuses on the comparison of the previous and the present legal framework.*
- *Singh, Arun Kumar and Kumar, Anil, Insider Trading: Comparative Analysis of India and USA (December 1, 2014) the research seeks to examine the legal mechanism prevalent in India and assess the extent to which it has been implemented by interpreting cases taken up by the Courts.*
- *Grover, Udit and Chandra, Varun, Insider Trading: A Modern Crime or Not? (April 28, 2014). This article aims to put light on the legal regime of USA, UK and India and tries to draw a comparative analysis between them*
- *Shroff, Rishi, India's Sweeping Regulatory and Policy Changes: Heralding a New Era in Investor Protection in M&A Transactions? (December 1, 2014). Oxford University Commonwealth Law Journal, Volume 14, Issue 1, 2014. The article focuses on two perspectives: (a) expectations in corporate governance and (b) the law relating to the need of securities regulation.*
- *Arjun Nihal Singh," Insider trading- Analyzing the Indian Perspective"2014. The research seeks to examine the legal mechanism prevalent in India and assess the extent to which it has been implemented by interpreting cases taken up by the Courts.*

- *Yesha Yadav."Insider Trading and Market Structure,2015" This Article argues that the emergence of algorithmic trading raises a significant challenge for the law and policy of insider trading. It shows that securities markets are dominated by a cohort of "structural insiders."*
- *Bhattacharya and Daouk, "The World Price of Insider Trading", 57 Journal of Financial Economics page75. The paper emphasizes on the existence and enforcement of insider trading laws in market. And concludes that it is the enforcement that matters.*
- *Erosion of the Fiduciary Duty Requirement in Insider Trading Actions: Posted by Joel M. Cohen, Gibson, Dunn & Crutcher LLP However, recent reports suggest that in the U.S., the courts moved the insider trading jurisprudence toward the parity of information theory, thus discarding fiduciary duty theory; available at the link below: (http://blogs.law.harvard.edu/.../erosion-of-the-fiduciary-dutyrequirement-in-insider-trading-actions .*
- *Eric Engle Insider Trading in US and EU Law, available at the link below: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1271868. The paper shows that the E.U. Directive is heavily influenced by U.S. securities law. Of interest however is the implicit critique in the rejection of some features of U.S. securities law.*
- *Laura.N.Beny, Insider Trading Laws and Stock Markets around the World, available at http://www.umich.edu/centresandprograms/olin/papers.htm The primary goal of this article is to bring empirical evidence to bear on the largely theoretical law and economics debate about Insider Trading.*
- *Marc.I.Steinberg, Insider Trading-A Comparative Perspective at , 34 Sec. Reg & L.Rep.432,433 (2002), the paper focuses on regulation of insider trading regulation in developed securities markets. The paper focuses on a number of significant issues that merit exploration.*

- *Sandeep Parekh, "Insider trading laws should not become a booby trap", available at the link http://economictimes.indiatimes.com/articleshow/msid-3806148,flstry1.cms the paper focuses on the comparative analysis of insider trading laws in India, UK, USA.*

- *Stephen M Bainbridge, The Law and Economics of Insider Trading: A Comprehensive Primer; available at the link below: http://papers.ssrn.com/paper.taf?abstract_id=261277, at page 71*
- *Manish Agarwal & Harminder Singh; Merger Announcements and Insider Trading Activity in India: An Empirical Investigation (NSE Research Initiative, Paper No:8)(www.nseindia.com) An attempt is made to check it out whether trading take place on the basis of asymmetric and private information.*
- *Speech by SEC Staff :Regulation FD –An Enforcement Perspective by Richard H. Walker, Director, Division of Enforcement, U.S. Securities & Exchange Commission http://www.sec.gov/speech/spch415.htm . The paper deals with comparative analyses of the insider trading laws and the civil and criminal liabilities related to Insider Trading.*
- Sanyal, Jishnu, Critical Review of SEBI in the Backdrop of Financial Scams (April 10, 2012).
- *Speech by SEC Staff: Insider Trading –A U.S. Perspective Remarks by Thomas C. Newkirk . The principle objective of this paper is to demonstrate and analyze various aspects of Insider trading, and to evaluate the effect of this practice on the fidelity of a company towards the securities market and the common investor.*
- *Sharma, Vaibhav, Prohibition on Insider Trading: A Toothless Law (May 7, 2009). Law School Research Paper No. 996. The principle objective of this paper is to demonstrate and analyze various aspects of Insider trading, and to evaluate the effect of this practice on the fidelity of a company towards the securities market and the common investor.*
- *Ahmad, Tabrez and Tabrez, Malawat and Kochar, Yashovardhan and Roy, Ayan, Satyam Scam in the Contemporary Corporate World: A Case Study in Indian Perspective (August 23, 2010). The paper deals with Satyam scam which has been the greatest scam in the history of corporate world of the India. An effort will also be made to analyze the Satyam case in the context of other developed countries law.*

5. RESEARCH METHODOLOGY

The study is based on doctrinal research

The Data will be collected from secondary sources:

- Secondary Data-

Secondary data regarding the Insider Trading practices will be collected from the annual report, websites of banks, journals, magazines and newspapers.

6. LIMITATIONS OF THE STUDY

As the study will be based on doctrinal research it may lack empirical orientation as personal interaction with those involved in Insider Trading and other stakeholders who are the sufferers especially shareholders spread across the globe, in addition to that many instances of insider trading do not come to the fore at all.

CHAPTERISATION

Chapter 1: Introduction

- **Meaning of Insider Trading, Evolution of Insider Trading Laws in General.**
- **Historical Development of Laws on Insider Trading in India.**

Chapter 2: Laws relating to Insider Trading In India.

Chapter 3: Emerging trends of Insider Trading in INDIA

Chapter 4: A Comparative Analysis of Laws governing Insider Trading In INDIA & developed countries(UK & USA)

Chapter 5: Conclusions & Suggestions.

REFRENCES

Statutes:

- Capital Issues (Control) Act, 1947
- Companies Act. 1956
- Company Accounting Reform and Investor Protection Act popularly referred to as the Sarbanes-Oxley Act, 2002.
- Criminal Justice Act, 1993
- Defense of India Act, 1939
- EU Insider Dealing and Market Manipulation Directive, 2003
- Financial Services and Markets Act, 2000
- Information Technology Act, 2000
- Insider Trading and Securities Fraud Enforcement Act, 1988
- Private Securities Litigation Reform Act
- SEBI (Buy-Back of Securities) Regulations, 1998
- SEBI (Merchant Bankers) Regulations, 1992
- SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009
- SEBI (Prohibition of Insider Trading) Regulations, 1992
- SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997
- Securities and Exchange Board of India Act, 1992
- Securities Contract Regulation Act, 1956
- Securities Act, 1933
- Securities Exchange Act, 1934
- Telegraph act, 1885
- The Companies Bill, 2008
- The Insider Trading Sanctions Act, 1984
- Australian Corporations Act, 2001
- Securities and exchange board of India (Prohibition of Insider Trading) Regulation2015.
- SEBI (Insider Trading) (Amendment) Regulations, 2002, w.e.f. 20.02.2002.
- SEBI (Prohibition of Insider Trading) (Second Amendment) Regulations, 2002, w.e.f. 29.11.2002.
- Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

Committee Reports:

- Committee on Financial Sector Assessment. India's financial Sector Government of India dated March 2009.
- World Bank Report on the Observance of Standards and Codes (ROSC) Corporate Governance Country Assessment – India - April 2004.
- Report of Kumar Mangalam Birla Committee Report, May 7, 1999
- Report of Patel Committee, set up in 1984.
- Report of Thomas Committee, set up in 2008.
- Report of Sachar Committee, set up in 1977.
- "Insider Trading Discussion Paper"; Companies and Securities Advisory Committee; June 2001.
- The 47th (forty-seventh) report of the Law Commission on 'Trial and Punishment of Social and Economic Offences'.
- Report of the Dhanuka Committee set up in 1997.

Cases:

1. Hindustan Lever Ltd. v SEBI (1998 SCL 311)
2. Samir C. Arora v SEBI (2004 49 SCL 351 SAT)
3. Videocon International Ltd. V. SEBI [(2002) 38 SCL 422 (SATMUM)]
4. Anand Rathi v SEBI[(2001) 34 SCL 326]
5. Rakesh Agrawal v SEBI (2003)

Internet Resources

1. International organization of securities commission (2008) http://www.iosco.org
2. Securities and Exchange commission (2008) http://www.sec.gov/
3. Securities and exchange board of India (2008) http://www.sebi.gov.in/
4. The times internet edition (2008) http://www.thetimes.co.uk